"Provided that all acts commenced or done under the regulations hereby repealed shall have effect for all purposes as if such acts had been commenced or done under the provisions of these regulations and as if these regulations had then been in force."

The question naturally arises, what if the acts commenced or done under the repealed regulations were not valid even under those regulations? It seems to me clear that such acts cannot be legalised *ex post facto*. Otherwise, the results will not only be unintended but absurd. The point in issue here, for instance, is whether the appointment of the members of the tribunal for a term expressly limited to expire on December 31, 1965 would not have lapsed automatically under the repealed regulations themselves so as to be impossible of revival. This and other related questions should be of great interest to explore at length but for the fact that, in my view, the effort will be no more than an academic exercise.

Unfortunately, there were omissions and oversight in more quarters than one, resulting in the points now raised having been overlooked all round. The point made by Mr. Puthucheary, counsel for the first respondent, is that, the relief applied for by *certiorari* being wholly discretionary, the appellants' own conduct throughout the whole course of the arbitration proceedings, and after, disentitles them to relief. Even where the objection was not taken by the respondents in the court below, they should not be precluded from doing so now. I consider this contention well founded, being the view of Willmer L.J. expressed in *Thomas* v. *Marconi's Wireless Telegraph Co. Ltd.*[1]

"On principle, I should have thought it plain that the position of a respondent, who is brought to this court on appeal against his will, is necessarily quite different from that of an appellant, who initiates the proceedings in this court. It is right that an appellant should be precluded from raising here for the first time a point not taken below. But it seems to me that there is no similar justification for shutting out a respondent who is brought here on appeal from taking any point in support of the judgment which he has obtained."

The tribunal sat for 10 months, conducted 32 hearings, of which 28 hearings, spread over 8 months, were held after the new regulations had come into force. At none of the hearings was any objection taken to the jurisdiction of the tribunal. After the award of June 24, 1966 the first respondent took the further step of applying to the tribunal for a variation of its award. It was, however, subsequently withdrawn when the secretary to the tribunal pointed out that it had no power to reverse its own decision. It was, of course, on that account that application was made to the High Court to quash the tribunal's award. It seems to me, therefore, that the jurisdiction of the tribunal remaining unquestioned for so long after it could have been is relevant in deciding whether or not to grant relief at this stage to the appellants. Authority for this view is to be found in *R.* v. *Williams & Ors., ex parte Phillips* [2] in which Channell J. said:—

"No objection was taken to the jurisdiction of the court below at the hearing before that court; that being so, it is the rule of this court not to grant a writ of *certiorari* except upon an affidavit which negatives knowledge on the part of the applicant when he was before the court below of the facts on which he bases his objection. That rule is established on good grounds. It applies equally whether the objection is on grounds which make the act of the justices voidable or void."

Later, he continued:—

"In my view the writ is discretionary. A party may by his conduct preclude himself from claiming the writ *ex debito justitiae* no matter whether the proceedings which he seeks to quash are void or voidable. If they are void it is true that no conduct of his will validate them; but such considerations do not affect the principles on which the court acts in granting or refusing the writ of *certiorari*. This special remedy will not be granted *ex debito justitiae* to a person who fails to state in his evidence on moving for the rule *nisi* that at the time of the proceedings impugned he was unaware of the facts on which he relies to impugn them. By failing so to do a party grieved precludes himself from the right to have the writ *ex debito justitiae* and reduces his position to that of one of the public having no particular interest in the matter. To such a one the granting of the writ is discretionary."

This decision was followed by this court in *Chop Wong Soong Co.* v. *Khoo Hean Kee* [3] where the appellant was held to have disentitled himself to leave to apply for an order of *certiorari* out of time, "because at the time he took no exception to what was done." Thus the principle which must guide the courts is clear and not to be lightly disregarded.

I would dismiss this appeal with costs.

Raja Azlan Shah and **Pawan Ahmad JJ.** concurred.

Appeal dismissed.

Solicitors: *Braddell & Ramani; Skrine & Co.*

ALAGAPPA CHETTIAR v. COLLECTOR OF LAND REVENUE, KUALA LUMPUR

[F.C. (Ong Hock Thye F.J., Raja Azlan Shah and Pawan Ahmad JJ.) February 20, 1968]

[K.L. — Federal Court Civil Appeal No. X. 24 of 1967]

Land Law — Compulsory acquisition — Market value of land — Price paid for acquired land at recent purchase — Not sole test — Sale of undivided share in land — Land Acquisition Act, 1960, ss. 4 & 38(5).

This was an appeal against the decision of Gill J. who had upheld on appeal the award of the collector of land revenue at $3 per square foot for the acquired land (*sub nom, Chuah Say Hai & Ors.* v. *Collector of Land Revenue, Kuala Lumpur* [1967] 2 M.L.J. 99). It appeared that in coming to his decision the learned judge relied on the fact that a half-share in the land had been sold for $2.20 per square foot seven months before the acquisition.

Held, allowing the appeal: (1) it is not a correct principle that it is only in the absence of evidence of recent sales of the same land or lands in the same vicinity that other methods of ascertaining the market value can be resorted to; the appropriate principles to be applied must depend on the special facts of each particular case and be applied according to sound practical commonsense;

(2) the award of $3 per square foot could not stand as it was based on false premises as (a) no distinction was observed between the market value of an undivided interest and the whole interest in the land and (b) the value of the land had been depressed by the presence thereon of an army camp but enhanced considerably since the sale of the half-interest in the land by the removal of the camp before the date of the government acquisition;

(3) the court had to ascertain the market value of the land which was a question of fact for the tribunal which can only be ascertained on expert evidence, and on the facts of this case as explained by expert evidence, the market value of the land should be held to be $8 per square foot which after deductions would leave a net award amounting to $7.09 per square foot.

Cases referred to:—

(1) *Superintendent of Lands & Surveys* v. *Aik Hoe & Co. Ltd.* [1966] 1 M.L.J. 243, 245, 247.

(2) *Vyricherla Narayana Gajapatiraju* v. *Revenue Divisional Officer, Vizagapatam* [1939] A.C. 302.

(3) *Nanyang Manufacturing Co.* v. *Collector of Land Revenue, Johore* [1954] M.L.J. 69, 71.

(4) *Duke of Buccleuch* v. *Inland Revenue Commissioners* [1965] 3 W.L.R. 977.

(5) *Ellesmere* .v *Commissioner of Inland Revenue* [1918] 2 K.B. 735.

(6) *Khushiram* v. *Assistant Collector, Shikarpur* A.I.R. 1925 Sind. 112.

FEDERAL COURT.

S. D. K. Peddie for appellants in X.24, X.26 to X.30 of 1967.

Ng Ek Teong (*Ponniah* with him) for appellants in X.32 to X.34 of 1967.

Azmi Kamaruddin, Legal Adviser, for the respondent.

Cur. Adv. Vult.

Ong Hock Thye F.J.: This appeal raises the question: what was the proper market value, as on June 4, 1964, of the parcel of land 991,730 square feet in area (22.763 acres) situate within a 2-mile radius of the centre of Kuala Lumpur, which was compulsorily acquired by the Selangor State Government for its housing purposes. The appellants claim $12 per square foot. The award of the Collector of Land Revenue, at $3 per square foot, was upheld on appeal by Gill J. This is an appeal against his judgment.

Since the learned judge held that "the principle upon which the collector proceeded to value the land acquired was the correct principle and that in arriving at his valuation he has taken into account all the circumstances of the case", it follows that in the collector's award no error or omission could be found in the facts relied on or the inferences derived therefrom. A careful examination of the award itself is therefore imperative. Entitled "Grounds on which the amount of compensation was determined," the award made and delivered on December 16, 1964 was in the following terms:—

"The lands to be acquired are not situated within the commercial centre of the town but in a comparatively poor residential section. As a whole they are irregular in shape and development would therefore entail considerable loss of land for a comprehensive road system which will be necessary. There are numerous squatters on the lots at the rear and north-west corner. A private developer would therefore have to spend considerable sum in any effort to evict these squatters. This tends to reduce the value of the lands.

An undivided share of the lands to be acquired was sold by Devarayan Chettiar to the present nine co-owners at $2.20 cts. per square foot on 5th November, 1963.

The lands to be acquired totalled 22.763 acres. Any prospective buyer of land of this size would inevitably expect a lower price than would be the case if he were to buy a smaller area.

Under the circumstances, I value the land at $3 per sq. foot and award a total compensation of $2,975,190 to be divided amongst the owners according to their respective shares in the lands."

I think it not at all unfair to say that the whole tenor of the award was rather depreciatory. Salient negative features considered as rendering the property unattractive were pointed out, namely, (a) its situation as "not within the commercial centre of the town, but in a comparatively poor residential section"; (b) its irregularity in shape, entailing "considerable loss of land" for roads; (c) the presence of numerous squatters, expensive to evict, thus "tending to reduce" the land value; (d) its size itself, being a disadvantage, in that "any prospective buyer of land of this size would inevitably expect a lower price" than for the purchase of a smaller area.

Although the collector was performing a quasi-judicial function, in which there should be no room for any appearance of bias or partiality, whoever reads the award must be left with the impression that there was nothing worthy of mention on the credit side that might have attracted the prospective investor or speculator as purchaser. It is therefore not a little surprising that the land which cost $2.20 per square foot on November 5, 1963 — no bargain price at that, according to the government valuer's report itself — should nevertheless have been considered as appreciating by no less than 80 cents in the short space of 6 months for no apparent reason. I say "no apparent reason" because none was given and neither the learned judge nor this court is at liberty to indulge in speculation on what he thought but failed to say. If the increase was fixed arbitrarily, why no more or no less? If not, on what principle, if any, was the price increase based? It must, of course, be assumed that all material facts affecting the price, whether upwards or down, were

considered and that, if the grounds of award omitted any relevant fact, it was because such fact had either not occurred to the collector or he had brushed it aside.

In all fairness to the collector, however, I hasten to add that his award was based entirely on the report made by the valuation officer in the treasury. Consequently, I propose to take the next logical step by examining the report of the valuation officer. In this connection I think it pertinent to remind oneself that there is an appreciable distinction between a valuation made by the government valuer *with a view to* acquisition — which could be dropped if the price to be paid was found unacceptable — and a valuation made *after* acquisition when it ceased to be revocable and there was no escape from paying the price. In this case the government valuer was well aware of the fact and the tenor of his report shows what was uppermost in his mind when he approached his task. He duly inspected the land on October 1, 1964 — after notice of intended acquisition had been gazetted — made further researches and completed his report, Exhibit D.13, in December, a week or two before the collector made his award. It is true that he subsequently gave evidence before Gill J. on October 27 and 28, 1966 but, in my opinion, his report, made 20 months earlier, should provide a more reliable guide as to whether or not he had made a fair and proper assessment of the market value, and whether omissions to take material facts into account were being supplemented at the appeal by afterthoughts. For the moment I shall refer only to the latter portion of his report, which was not a summary, but a statement in detail, setting out precisely and completely the grounds on which he valued the land at $3 per square foot; it runs as follows:—

"In arriving at my market value under paragraph 2(a) of the First Schedule to the Land Acquisition Act, 1960 I have taken into account the following:—

(1) The land acquired comprises a total area of 22.763 acres, that is 991,730 sq. feet. A prospective purchaser buying a piece of land of this *size* in the town of Kuala Lumpur would invariably expect a reduction in value as an inducement to take over the bulk of the property as a whole and a sufficient margin of profit for the *risk* undertaken to justify embarking on development.

(2) The rear portion and the northwest corner are covered with numerous *squatters* (approximately 58) which can be extremely problematic from the development point of view. Some of the occupiers are paying ground rents to the owners. Their presence would depreciate the value of the land as a prudent developer would take into account the amount he would compensate them before demolishing the temporary building in order to speed up development.

(3) This section of Jalan Pekeliling is not only *NOT* a commercial area but also a poorer residential area of Jalan Pekeliling.

(4) The land is irregular in shape, slightly elevated at the rear and disected by a rectangular strip of State Land. Development would entail a comprehensive system of roads involving about 4 acres of land. The shape makes it difficult to have a good layout unless State Land which adjoins it is included, without which there will be some wastage of land.

(5) Previous sale of land in question which took place only *seven months* before acquisition, the purchase price being $2.20 per square foot (that is, $95 832 per acre).

(6) Other recent sales in the immediate vicinity.

(7) There is unlikely to be an immediate demand for good-class flats in this locality in view of the number of such flats that are being or will soon be erected on the adjoining lands and each phase of development will satisfy demand to a great extent. Regarding the low-cost flats demand depends entirely on the price placed on the flat. Demand for flats seems to be on the decline and banks are reluctant to loan money for the purchase of flats. This locality is conspicuously void of shops apart from a block at the frint of Jalan Taiping. Perhaps, there is an established and important shopping thoroughfare too near it namely Jalan Ipoh, which tends to dim the importance of this locality as a shopping area. Shops suitable for this area will be lock-up shops catering for daily needs for which demand is limited. It must be noted that it is demand which creates value."

Before I turn to the judgment I should first mention briefly certain facts in the light of which the first sale of the land should have been considered. First, the land was not held by the appellants as an undivided unit, under a single title, but under seven separate titles, varying in area from approximately 6½ acres to just under a half-acre. Secondly, all these titles were held in undivided shares by several owners, Alagappa Chettiar alone being the proprietor of a half-share acquired by his father over 30 years ago. Thirdly, purchase of the other half-share was made by Alagappa's co-owners from one Devarayan Chettiar, a man in his early twenties who had acquired his title by partition following long litigation between the partners of a Chettiar firm; this young Chettiar was an Indian citizen, who had entered Malaya on a visit pass, granted by the Immigration authorities, for the purpose of getting his share of the partnership estate, and who, on that account, had been able to obtain extensions permitting him to remain in this country for about 4 years, of which the last 3 were continuous; having finally succeeded in his objective in 1962, the final extension of his pass was due to expire in June 1964. Fourthly, the sale by him before the expiry of his permit to stay resulted in the proceeds being exempt entirely from liability to heavy Indian capital gains tax — a saving of approximately 65 per cent.

I come now to the judgment itself. The learned judge has upheld the government valuer's opinion that the earlier sale price of the land itself was the true "keystone" of his valuation. It continues to be maintained by the respondent in this court that both the government valuer and the judge rightly relied on such "keystone".

The appellants strongly contest this assumption. They say that the previous sale price by

itself afforded no absolute criterion. It could not be considered in isolation, without taking into account relevant circumstances under which that sale took place. In a nutshell, they claim that, at the price of $2.20, the purchase had in fact been at a bargain price well below market value.

It may therefore be said here and now that, in the main, the award stands or falls according as the accepted market value of $2.20 proves to have been founded on firm bedrock or on sand.

In the opinion of the learned judge "the fundamental rule is that when the property under acquisition has been recently purchased, the price paid is *prima facie* the market value thereof." In effect, by his judgment he has found that this rule applied without any qualification whatever. How he reached this conclusion is explained thus:—

> "It is clear from the authorities that where the land acquired was purchased by the owner within a reasonable time of its compulsory acquisition, the price paid affords infinitely the best material for calculating its market value, the reason being that the elements of dissimilarity will be least present when the transaction sought to be applied is a previous purchase of the same property. The owner, of course, can show that since his purchase there had been an all-round increase in the price of land generally, in which case a proper allowance can be made for such increase. Where there has been no recent sale of the same land, only sales within a reasonable period of lands more or less similarly situated in the same neighbourhood and possessing similar advantages are helpful in determining the market value of any land. As no two lands can be precisely similar in all their circumstances and conditions, a suitable allowance can be made for any differences. No hard and fast rule can be laid down for the allowances to be made in respect of the increase in value of the same land or for the differences between the land acquired and the neighbouring lands, but market value is not required to be calculated with mathematical accuracy and precision. What is required is a fair estimate of market value. *It is only in the absence of evidence of recent sales of the same land or lands in the same vicinity that other methods of ascertaining the market value can properly be resorted to.* Estimates of value by experts are undoubtedly some evidence, but their value is not great, as expert opinion is liable to err, unless it is supported by or coincides with other evidence."

The authorities which he referred to were the judgment of this court delivered by Suffian J. (as he then was) in *Superintendent of Lands & Surveys* v. *Aik Hoe & Co. Ltd.*,[1] the well-known dicta of Lord Romer on "market value" in *Vyricherla Narayana Gajapatiraju* v. *Revenue Divisional Officer, Vizagapatam* [2] and other dicta by Buhagiar J. in *Nanyang Manufacturing Co.* v. *Collector of Land Revenue, Johore.*[3] With all respect, none of those decisions, in my judgment went as far as the learned judge thought they did. They certainly did not purport to enunciate any inflexible rule as to what are or are not relevant to be taken into consideration. If the learned judge in the instant case intended to lay down the rule, as a deduction from those judgments, that "it is only in the absence of evidence of recent sales of the same land or lands in the same vicinity that other methods of ascertaining the market value can properly be resorted to," then I would respectfully record my dissent. The general principles for assessing market value applicable in acquisition, rating and estate duty matters, as exemplified in leading cases, are well-known and do not call for recapitulation here. Suffice it to say that, in the final analysis, the appropriate principles to be applied must depend on the special facts of each particular case and be applied according to sound practical commonsense, rather than by some artificial rule of thumb. To illustrate what I mean I would refer to the judgment of Lord Denning in *Duke of Buccleuch* v. *Inland Revenue Commissioners* [4] where the Master of the Rolls (at pages 989-990) said: "(1) You are to envisage a hypothetical sale at the time of the death of the deceased etc.," and concluding thus: "applying those principles here, it seems to me the hypothetical sale we must envisage is that which the lands tribunal envisaged. . . ."

Perhaps in the last paragraph I have expressed myself at some length, but my purpose, at the outset, is to make clear my opinion beyond peradventure that there was no justification, upon any authority, for applying the restricted view in the instant case that the previous price paid for the same land "affords *infinitely the best* material for calculating its market value," to the entire exclusion of all surrounding circumstances and relevant facts. As the learned judge himself said: "What is required is a fair estimate of market price". *Ex concessis*, therefore, the determination of the "market price" clearly involves proper inquiry into comparable prices, and what prices are comparable as relevant must invite a commonsense approach to the question. The only artificial limits imposed on the scope of such inquiry are those laid down in the First Schedule to the Land Acquisition Ordinance, 1960.

To return to the judgment, the learned judge proceeded next to discuss the case put forward by the appellants. This may be summarised under four heads. First, he discounted *in toto* the evidence of both Alagappa and Palaniappa that Devarayan sold at a disadvantage for personal reasons. Secondly, he discussed the evidence of Mr. Williams, the appellants' valuation expert, and rejected it also *in toto*, on the ground that the prices paid on sales of land not in the immediate vicinity of the land acquired were "wholly irrelevant" and "must be disregarded". Thirdly, he discussed the potentialities of the land but dismissed them shortly with the remark that "this was certainly not a case where the collector treated the land acquired as agricultural land for the purpose of assessing its market value." My only comment is: Can anyone lump non-agricultural land indiscriminately together as

though all building land must belong to a single class? Fourthly, the judge dismissed the appellants' contention that the sale price of an undivided partial interest in land afforded no true criterion of market value when assessing the price of the whole interest in the same land. In his judgment, because the sale was "in the open market and the parties were at arm's length", the sale of the land itself in November 1963 was the best evidence of its market value.

I shall now deal with these four heads in turn, but taking the first and fourth together as they are closely related, the question boils down to this: Did Devarayan manage in fact to obtain for his undivided half-interest the same price which the same acreage of land would have fetched had he been the sole proprietor thereof selling in open market? Starting with the facts, I quote the uncontradicted evidence of Alagappa: "He (Devarayan) asked me to join him in selling the land, because nobody would want to buy an undivided share." Another witness, again uncontradicted, was Palaniappa who said: "After he got the lands Devarayan Chettiar was trying to sell the lands. He asked me to assist him in selling his share because it was difficult to sell half a share in the land. Alagappa Chettiar did not agree to sell his half share. Then Devarayan tried to sell his share. No one came forward to buy." Ng Chong Geng, the major purchaser said: "I found out that only an undivided half-share in the lands was to be sold . . . I was not keen to buy it, because at that time I did not know the owner of the other share." And then Mr. Williams to this effect, that in his practice as estate agent he had on occasions been asked to sell undivided shares in land, but found it extremely difficult and purchasers invariably paid less than the proportionate value of the land. The lone voice in qualified dissent was that of the government valuer in whose opinion "it is a general statement that reliance should not be placed on sale of undivided shares. This is not necessarily true in all cases." But what experience had he? He admitted that he had none. So much then for the evidence, which clearly was all one way: Devarayan had been unable to find a ready purchaser because of the nature of his interest in the land.

Nor was it senseless prejudice against undivided interests in land. The truth is that practical difficulties are well-known to have constantly been encountered by owners of such interests under the land law formerly in force, which are by no means solved by the legislation which now replaces it. Since the Land Code (Cap. 138) was applicable at the relevant time, the difficulties confronting the owner of an undivided interest under the prevailing law necessarily should have been taken into account in considering what price a purchaser of such interest in the open market would have been ready and willing to pay. *A fortiori* by the judge himself, as the question was strenuously canvassed before him and he has himself more than a nodding acquaintance with the provisions of the Land Code. I feel almost hesitant having to state the obvious, but in my judgment there can be no doubt that sales of undivided interests in land involve so many practical and potential difficulties for the purchaser that they can hardly be considered as a reliable guide to market value, unless the most thorough inquiry is made into the special circumstances of each case. Putting it briefly, subdivision, the only means to get rid of undivided interests, was even by itself fraught with impediments in the absence of agreement between all the co-owners: and the more co-owners the greater the problem of course. Were Alagappa to die, for instance, leaving problems of succession in the Hindu joint family to be sorted out, the position of the purchasers from Devarayan would have been very unfortunate. They would have been faced with an effective moratorium on every attempt to develop or even lease a portion of the land, unless and until the question of succession to Alagappa's estate had been sorted out.

Indeed, at every stage and in every transaction affecting undivided interests in land the co-owner indubitably has not the same individual freedom of action as the owner of the whole interest, simply because the co-owner is not owner of any identifiable part, but merely co-sharer of every portion of the whole. I think I need say no more on the point here. Should this case go further, counsel will have ample opportunity then to dilate on this point, if an issue is made of it.

The government valuer's report, however, took no account of this act. What the appellant purchasers obtained in November 1963 was in truth a title inferior in nature and quality to the title acquired subsequently by the Government in June, 1964. That being so, I fail to see how the government valuer could fairly have applied the one price as the basis for calculating what the other should be. Had the Government acquisition been of a similar undivided half-interest then there would have been a common factor present in both the transactions. Where no such common factor exists, by what formula had the equation been achieved? It seems to me an insoluble mystery. In my judgment, therefore, this fact alone demolishes the so-called keystone and any reliance thereon as an essential premise of the award was misplaced and wholly unjustified.

Now, as to the supporting ground, relied on by the appellants in support of their contention that $2.20 was below market value, this was the view taken by the learned judge:—

"I cannot believe that Devarayan Chettiar, young though he was, had not the wit to make enquiries as to

what the fair market value of the land was before selling it. If the applicants were going to rely on the fact that the land was sold cheap, it was open to them to call Devarayan Chettiar as a witness or have his evidence taken on commission in India. They thought fit not to do so and are asking the court to say that he sold his land cheap merely because he had no intention of living in this country."

With respect I regret to say that I consider this conclusion against the weight of the evidence on the record. I shall now recapitulate the facts not open to dispute, which should have been considered, but were not. They are as follows:—

1. Devarayan had been in Malaya 4 years, the last 3 continuously, until he departed finally in May 1964;

2. He was a young man between 22 and 24 years of age in 1962 who was here to claim his patrimony;

3. He was an Indian national resident in India to whom the Immigration laws are strictly applied. "In 1963 he got an extension of one year on his visit pass, until June 1964. He was told it was the final extension." In fact he did leave for India in May 1964;

4. "He wanted to stay here, but he could not get permission from the Immigration authorities. He had to leave the country by the middle of June 1964 and in order to escape the capital gains tax he had to sell the land before April 1964;"

5. "Capital Gains Tax is profit on the sale of land . . . 75% of the income tax rate . . . about 65%. Devarayan did not have to pay the Indian capital gains tax if he sold the land when he was in this country". To qualify for exemption an Indian "has to be outside India for one year to avoid capital gains tax." Devarayan "had to sell his land before April 1964 to avoid capital gains tax;"

6. Ng Chong Geng said he "had reason to believe that the Chettiar was prepared to sell the land cheap because he was in a hurry to go back to India."

The above facts were testified to by both Alagappa and Palaniappa, with corroboration by Ng Chong Geng. On the incidence and rate of capital gains tax and how exemption could be claimed, their evidence was supported by Mr. Varadachari, a chartered accountant of India. The testimony of all these witnesses as to the above facts was never challenged or contradicted. On what grounds then could the learned judge have said as he did: "I have no hesitation whatsoever in saying that I can place no reliance whatsoever on all this evidence, which to my mind, was produced in order to boost the applicant's claim to higher compensation"? Was it a strain on anyone's credulity to imagine that the young man might have felt unbearably homesick at last, for wife or family, after long absence? Was it at all unreasonable or improbable that, having no further, grounds for hoping for an extension of his visit pass, reason of his having succeeded in getting in his estate, he bowed to the inevitable — that he had to make his final departure before June 1964? Having tried and failed to sell his half-share, after Alagappa refused to join in selling the whole interest, was it at all improbable that he became reconciled to accept any offer within reason, even if he knew it was below the market price? Was not the saving of 65% of the proceeds from taxation cogent reason enough to influence him in accepting the best offer made? In short, was there in truth any ground for holding both Alagappa and Palaniappa unworthy of any credit "whatsoever"? Had either of them been caught out telling any lie before the judge, particularly as Palaniappa was a disinterested witness? True that Alagappa was interested to the extent of a half-share, but having a legitimate interest in the outcome of litigation is surely no disqualification. Since the appeal against the award was unshamedly to obtain the higher compensation which he felt was due to him, why should this Chettiar be denied the credit that is due to all men who had done nothing to forfeit it?

Furthermore, all that the judge said about Devarayan and his business acumen was nothing but pure surmise. The judge himself had never seen him to observe his demeanour. On the other hand, the witness who knew him best had said he was inexperienced. Was that necessarily false or are all Chettiars, even inexperienced ones, assumed to be astute? What else was this young man expected to do, after he had made every effort to sell his half-interest and failed? Therefore, laying on the appellants the onus of calling Devarayan as their witness, under pain of having the established facts in their favour rejected in default, seems to me quite unwarranted. Having supported their contention by established facts and uncontradicted evidence, was Devarayan's oral testimony not superfluous or at least dispensable? For the above reasons I am satisfied, at this stage, that the appellants have discharged the onus of proof to the extent of showing (a) that $2.20 was not even *prima facie* the true market value of the undivided half-interest on November 5, 1963 (b) that there were ample grounds for the conclusion that Devarayan accepted an offer below the market value of his share and (c) that, in any event, the sale price of the undivided half-interest provided no proper criterion for the subsequent valuation of the whole interest.

I propose next to deal with the potentialities of the land and the experts' valuation, together, since both subjects are closely related.

Before doing so, however, certain other incidental matters will be more conveniently disposed of at this stage. In my judgment the government valuer's report was replete with serious errors, some of which will be discussed later, with particular reference to potentialities. For the present I refer to paragraph (2) of his report, on the presence of squatters being a depreciatory factor.

In the first place, there was an omission by the government valuer to take into account a striking difference between the condition of the land as it was in November 1963 and in June

1964. On this point the uncontradicted evidence of Alagappa was as follows:—

"There were some huts on 5 or 6 acres of the land which has been acquired by the Government. The rest of the land was occupied by the military. *The military occupied about 10½ acres.* The military vacated the land *after* Devarayan Chettiar sold his share and *before* the acquisition."

Ng Chong Geng, purchaser of the majority interest from Devarayan, also gave uncontradicted evidence as follows:—

"I saw the land before I bought it. Kasi Chettiar took me there. There was an army camp on a portion of the land . . . I bought the land for the purpose of building houses. I wanted to develop the land. I knew that I could not develop the land immediately because of the army camp, but I made a gamble . . . *If the army camp was not removed from the land I would not be able to develop the land at all and my capital would be tied down.*"

When the government valuer inspected the land on October 1, 1964, he found no army camp, but only squatter huts. But across the road a portion of the camp still remained. It is true that the government valuer did say, "The army camp on Lots 18 and 19, *according to the records I have seen,* were demolished in 1962. There was a small camp opposite the road on Lots 95 and 96. The Government took a lease of three years from 1958." However, as both Alagappa and Ng Chong Geng had categorically stated in their evidence that the camp was a prominent feature of the land in November 1963, their evidence stood unrebutted because the records were never produced and the valuer's testimony on the point was pure hearsay. Moreover, the expiry of the three-year lease in 1961 proved nothing, because the Government probably continued to hold over for some time as it did on Lots 95 and 96 across the road. Indeed, the fact that the camp still existed at the time of the purchase was an admitted fact within the valuer's own knowledge, as appears from his own evidence, as follows:—

"I did not make any investigations as to the circumstances of the sale of the land under acquisition on 5th November, 1963.

There was ample vacant land on the land acquired for a developer to start work and take time to clear the squatters from the other area. *What was not vacant was the area the army had occupied.*"

It cannot be denied that, if the presence of squatter huts on 5 or 6 acres was thought bad enough to depress the market value of the land as a whole, the army camp occupying, in addition, almost half its total area was even more unfortunate for Devarayan. Had the camp not been voluntarily vacated and removed, would it not have presented the purchasers a far greater problem to recover vacant possession from the Government than from private squatters? The opinion expressed by Mr. Williams in this respect must be accepted as well-founded when he said:—

"I knew about the sale of the land under acquisition in November, 1963. I considered it and discarded it for what I considered good reasons. The reasons were that it was a sale of an undivided share and the presence on the land of an army camp, so that developers were not interested in that land in that condition. . . . The army camp extended over the road to Lots 97 and 98. The land therefore was not on the market for development."

When the military presence subsequently disappeared, was not the desirability of the land vastly improved *ipso facto* in the eyes of any prospective purchaser in open market? This fact itself, in my judgment, lends strong support to the appellant's contention that the land was wholly unattractive, except to speculators, when sold by Devarayan, who consequently had to be content with whatever offer he could get and was thus unable to demand its full market value. On the other hand, because this drawback had disappeared before Government acquisition, the market value should have easily doubled, at least, quite apart from the trend of a rising market generally. Thus the government valuer's failure to take account of a highly material factor which depressed the price fetched by the land in November 1963 is further ground for holding the award defective and bad. I should add that on the evidence I am compelled to regard the omission as deliberate in view of the admission in his evidence which I have just quoted. It seems to me wholly wrong for the government valuer to have passed over this material fact in complete silence as though it did not matter.

In the second place, the government valuer was again in error in assuming that a prospective purchaser buying land of the size of 22.763 acres "would invariably expect a reduction in value as an inducement to take over the bulk of the property as a whole." His explanation for so doing was that he "was required to value the land as a whole as they are contiguous lots." Had the whole land been held under a single title, this might have been plausible, but not if the result was that the true facts were disregarded to the prejudice of the owners in favour of the acquisition authority. Since the land comprised seven separate units, held under separate titles, varying in area between approximately 6½ acres and just under a half-acre, there was never any compulsion on any prospective purchaser in open market, as alleged, to take more than he needed or could pay for. There was a variety of sizes to meet all demands and pockets. On this ground then the report, and the award and the judgment upholding it, has also been proved to rest on false assumptions of fact.

In the third place, another material factor taken into consideration as reducing the market value on acquisition was that the land was irregular in shape, entailing wastage of some four acres in the process of development. This criticism of course was no longer valid since 1958. As Alagappa said, it was a fact that "irregularity

of the land was overcome in 1958 by reason of the adjustment shown in the plan" (Ex. P.3). The government valuer, however, admitted that he had not seen Ex. P.3 before making his report and he has agreed that "the shape of the land had been improved as a result of this plan."

To sum up, I am abundantly satisfied that the award of $3 per square foot cannot stand simply because it was based on false premises. It is only necessary to refer to two fundamental errors: (a) that no distinction was observed between the market value of an undivided interest and the whole interest in land, the lack of a common factor destroying any basis for comparison between the two; (b) that in the open market, the value of the same land was depressed by the presence thereon of an army camp occupying approximately 10½ acres at the date of sale of Devarayan's half-interest, but enhanced considerably by the removal of such camp at the date of Government acquisition. No account was ever taken of this material fact in the grounds of award.

Since it has thus been demonstrated that the award must be set aside, it follows that the question of market value is now at large. For this reason it is no longer necessary to discuss in detail the appellants' manifold criticisms of the judgment itself. Suffice it to say generally that in my judgment the grounds of appeal are well-founded.

It will now be the task of this court to make our own assessment of the market value of the land. On this point I may say at once that, with all respect, I do not share the views expressed by the learned judge on the value of the expert evidence in this case. Paradoxically, though, I observe that he was able to voice unqualified approval of the evidence *and opinion* of the government valuer on the one side, while rejecting completely the evidence of Mr. Williams in opposition. High authority for the view I would respectfully adopt here is that expressed by Danckwerts L.J. in the *Duke of Buccleuch's* case:—[4]

> "It seems to me that the sale which is supposed . . . is a hypothetical sale . . . in the open market at the best price which could reasonably be obtained . . . The best price which can be obtained by the best reasonable method by which the price will be ascertained, therefore, is a pure question of fact and it is presumed, or rather imagined, to take effect on the date of the testator's death. *That seems to me to be a question of fact for the tribunal which can only be ascertained on expert evidence.* It is not really a matter of law at all."

In the same case it will also be noted that both Lord Denning M.R. and Danckwerts L.J. approved and applied the principle enunciated by Sankey J. in the *Ellesmere* [5] case, that what has to be envisaged is a sale of the property "in such a manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property." In *Khashiram* v. *Assistant Collector, Shikarpur* [6] this principle was stated in similar terms, that "the fairest and most favourable basis on which compensation should be given to the owner is to take into account the estimate of the market value of the property in accordance with the most lucrative and advantageous way in which such land can be sold in open market at the time of the acquisition." Market value, therefore, does not mean simply the value of the land from the manner it is being actually used for the time being, but includes all future possibilities on which a prudent purchaser would calculate and a vendor would base his expectations, both parties being actuated by business principles. That is to say, market value necessarily includes the potential value, if any.

With regard to the potentialities of this piece of land diametrically opposite views had been expressed by the valuation expert on each side. Since the evidence for valuation purposes emanating from the other witnesses is so exiguous as to be negligible, this court has to fall back entirely on the expert evidence. Fortunately the reports on each side are replete with useful data showing how their respective inferences and conclusions had been drawn. I shall now proceed to discuss these reports in turn.

As to the government valuer's report I regret having to say that I regard its objectivity with grave doubt, particularly as it turned so largely on his personal opinion that "the previous sale of the land itself under acquisition would be a better guide than sales of other lands *however similar.*" Reading the same and taking paragraph (7) by way of illustration, it seems to me that, where any incidental reference to the potentialities was inevitable, he could only do so in disparaging terms. Indeed, the report appears less an objective presentation of facts than an exercise in special pleading. Thus in describing the land as "not only NOT a commercial area but also a poorer residential area of Jalan Pekeliling" the reason he gave was: "The flats all round had not come up. I therefore called it a poor area because of squatters on the land and mining land nearby." One should have thought that the extent of the land itself provides its own answer regarding the type of development for which it is best suited. Not only was this the common-sense view, but in the same report he even refuted himself: see paragraph (7) where he spoke of "good class flats" coming up in this very locality and that "*in June 1964 there were proposals for several tower blocks.*"

The question which may now be asked is whether or not the government valuer took into account the potentialities of the land when assessing its market value It will be observed that the report made no mention of any ground on which the increase of 80 cents was awarded. In

his subsequent evidence, however, he explained the omission by saying that he considered "a certain increase ought to be given to take into account a general rise in values between 5th November 1963 and 4th June 1964". This being the case, it is of course clear that the whole of the increase was awarded exclusively on the specific ground stated: *expressio unius exclusio alterus*. The respondent is, therefore, precluded from contending that the award of $3 took any account whatsoever of the potentialities of the land at the date of acquisition. Neither should it have been open to the learned judge to hold, as he would seem to have done, that "a suitable allowance can be made if the previous sale was of an *undivided share*." In the result, I consider that the proper conclusion to be drawn from the government valuer's report and evidence, taken together, is that the collector's award of $3 was one which had wholly disregarded the potentialities of the land. Hence the reassessment of market value which now falls to be made by us must take that factor into consideration.

As regards such potentialities the evidence of the appellants' expert Mr. Williams, is as follows:—

"In my report I have valued the land as at 4th June, 1964. I have visited the lands. They are within two miles from the centre of the town.

I considered the land in relation to accessibility. It is an excellent site for access from all parts of the town. The value of the surrounding land would improve with the cutting through of a 100-foot wide road.

I consider the site suitable for high density development. It is an area where one can expect a high concentration of population such as attracts the middle and upper artisan class. Just across the river there are three-storey flats and also across the road. This is the sort of development I would envisage on this land. *There are few sites of this area within the town.*"

The above was, of course, an expression of opinion. It was not, however, merely opinion based on conjecture, as the following evidence goes to show:—

"I see (plan) P.4. It shows the new proposed Circular Road. The proposal is to have tower blocks south of this new road. According to this plan the proposal is to have a cinema and offices to the north of the road. To the left there is to be a hotel, flats and shops. The plan makes provision for three types of development. The reserve for transmission lines is not proving a disadvantage. The road deviation makes very little difference. The new road would, however, give road frontage to the property on either side. There is marked in yellow on the plan a site for a petrol station. There is a Shell station on the other side of Gombak River. It is normal for another company to put up a petrol station near another petrol station. There would be a potential demand for petrol stations on the site.

There is a cinema called the 'Golden City' near the roundabout at Ipoh Road about 350 yards away. Another cinema could be accommodated in the district.

There is a junction at Princess Road, Pahang Road, Ipoh Road and Jalan Tuanku Abdul Rahman. From there Pahang Road and Ipoh Road run out in V-shape. This land in Circular Road lies within this V. All along Pahang Road there has been development right up to Setapak. Similarly Ipoh Road has been developed well past the Circular Road. Closer to town there would be few areas more suitable for development than this land in Circular Road. This is the nearest site from the town you can get for development. There are flats and terrace houses to the south, west and north-east of this land. The natural development of the land would be for flats and terrace houses."

The plan was a fact, the genuineness of which was never in doubt. As the learned judge himself said: "Indeed there is evidence that soon after they purchased their respective shares from Devarayan Chettiar the new purchasers put up a building plan of their own which commended itself to Alagappa Chettiar." By itself, this plan is valuable evidence, affording proof of a genuine intention on the part of the appellants to exploit the potentialities of the land to its fullest extent as property developers. It was, therefore a factor which Mr. Williams very properly considered.

With the keystone of $2.20 in mind, and still regarding it as "slightly high", the government valuer had sought evidence of market value in the following sales of land in the immediate vicinity of the land acquired:—

	Lot	Price per sq. ft.	Date of sale
(a)	18	$3.95	25.4.1962
(b)	21	2.50	17.8.1962
(c)	56	0.65	29.9.1962
(d)	29	1.12	29.9.1962
(e)	2285	6.38	14.3.1963
(f)	14	2.49	26.3.1963
(g)	Sate land for T.B. Hospital	3.50	19.10.1964

It is evident, from his report as well as the judgment upholding it, that the sale of Lot 29 was the only one considered as relevant, although it was by no means the nearest in point of time to the purchase made by the appellants on *November 5, 1963*. In point of size, apart from Lot 29, only three of the above were sales in excess of one acre, namely, Lots 56, 2285 and 14. While accepting Lot 29 for comparison purposes, Lots 14 and 2285 were rejected. The reason is not difficult to discern. It is clear that if the prices fetched by Lots 14 and 2285 were accepted, they would have the inevitable result of demonstrating that at $2.20 the acquired land had indeed been purchased in a rising market 8 months later at well below market value, as alleged by the appellants. On the other hand, admitting the sale price of $6.38 for Lot 2285 sold 14 months *before* Government acquisition, as reflecting market value, would have made the award of $3 look manifestly absurd.

I turn now to the report and evidence of Mr. Williams. He had explained how he approached his task thus: first, by a study of market condi-

tions, he was led to conclude that there was a steady rise in prices of Kuala Lumpur lands from Merdeka Year 1957, continuing as boom conditions until the latter part of 1964; secondly, he rejected the purchase price of the undivided half-interest as any true criterion for the reasons given; thirdly, he looked to sales of land in the vicinity, proceeding from those in the immediate vicinity to others farther off along the Pahang and Ipoh roads; finally, he examined comparable transactions in the Imbi Road area as a cross-check on the value of lands in similar positions and of similar quality. In all 19 sales were listed as having been studied: (see Ex. P.8). Counsel for the appellants urge that particular note be taken of the following:—

1. Sale of No. 4 Lot 9 Maxwell Road for $15 per sq. ft.
2. Sale of No. 7 Lot 2285 Pahang Road at $6.38 per sq. ft. in March 1963.
3. Sale of No. 8 Lot 1 Pahang Road at $7.90 per sq. ft. in April 1964.
4. Sale of No. 10 Lot 547 Ipoh Road at $7.85 per sq. ft. in April 1963.
5. Sale of No. 11 Lots 122 and 128 Ipoh Road at $10.85 per sq. ft. in April 1964.
6. Sale of State land for T.B. Hospital extension at $3.50 per sq. ft. in October 1964.

As to item (1) above, sale No. 4, Mr. Williams explained that he had quoted this sale, together with sales Nos. 1, 2 & 3, merely to show what price these lands approximately a quarter-mile from the acquired land were able to fetch at the relevant time. For present purposes I do not think these sales are of practical assistance since other transactions will be seen to be more pertinent.

The sales which may now be considered are sales Nos. 7 and 8 relating to Lot 2285 and Lot 1. As against these transactions the government valuer cited three other sales, namely, of Lots 29 and 56, both sold by their owners on the same day September 29, 1962 for $1.12 and 65 cents per sq. foot respectively, and of Lot 21, a one-sixth undivided interest which fetched $2.50 per sq. ft. on August 17, 1962. As will be seen in the town plans, Ex. P.9 and Ex. D.12, these five lots are all in the immediate neighbourhood of the acquired land. For easy comparison the following table in chronological order should be helpful:—

(i)	Lot 21	1.322 acres	@ $2.50	17.8.1962
(ii)	Lot 29	2.85 acres (9/10 interest)	@ $1.12	22.9.1962
(iii)	Lot 56	3.901 acres	@ $0.65	22.9.1962
(iv)	Lot 2285	1 a. 1 rd. 30 p.	@ $6.38	14.4.1963
(v)	Lot 1	1 a. 2 rd. 38.9 p.	@ $7.80	18.4.1964

It was conceded by the government valuer that Lots 29, 56, 2285 and 1 had the same potentialities as the acquired land. A study of the town plan bears this out. The curious and striking feature about the sale of Lots 29 and 56 by the owners thereof to the same purchasers on the same date at such great disparity in prices, not only *inter se* but also in relation to the price of Lot 21, which fetched more than double the price of Lot 29, and four times that of Lot 56, must give rise to speculation as to the reasons. This discrepancy in prices is so wide that in my opinion they are quite irreconcilable. Since these lands in the same close vicinity have the same potentials and all three transfers were registered within a short space of five weeks, it is impossible to say which of the sales was a truer reflection than the others of the prevailing market value. After careful thought, however, I am satisfied and find as a fact that a simple explanation exists. Under the *Torrens* system, the registration of a transfer of land frequently takes place at varying intervals of time, as may be agreed between vendor and purchaser, after the agreement of sale. This is readily discernible as instanced in the sale of Lot 1, where the agreement (Ex. P.11) was made on April 18, 1964 but postponement of completion and registration of transfer over a considerable interval was expressly provided for in clause 3(iv). This is common practice well-known in this country, and particularly convenient for property developers. Thus, in the case of Lot 1, whether the eventual registration of transfer took place last year or will take place in the future, the date of transfer affords no indication of the market value at the date of registration. Assuming, therefore, as one should that the sales of Lots 56, 29 and 21 were made between business men at current market prices, the only reasonable and probable explanation, consistent with the disparity in prices, must be that the various agreements of sale had been made at different times, the earliest being in respect of Lot 56, followed by Lot 29, and finally Lot 21. Particularly as the purchasers of these lots were property developers, I have no doubt that the transaction had followed the pattern of Lot 1 in broad lines, at least in respect of the delay between agreement and completion. If this conclusion is correct, as I believe it is, it follows that none of the three sales afforded any reliable guide on market value, since the date of the prior agreement must remain a guess at random. I would accordingly hold that both the learned judge and the government valuer erred in fact in accepting the date of registration of the transfer of Lot 29 as the date the sale price thereof was agreed.

As against the sale of Lot 29 the appellants' expert witness relied on the sales of Lot 2285 and Lot No. 1. The learned judge held that they should be disregarded for the following reasons:—

"The sale of Lot 2285 was a sale by a director to his company. It was not a sale in the open market. As Mr. Williams himself was forced to admit, if the sale

was by the director to his company, then it would not be a reliable comparison. The so-called sale of Lot No. 1 was not a sale at all. It was an agreement to sell in April 1964 at $7.90 per sq. ft. A small portion of the agreed purchase price was paid on the date of the agreement and the payment of the balance of the purchase price was subject to the fulfilment of various conditions. There is no knowing when the balance of the purchase price will be paid and there had been no completion of purchase up to the date of hearing. The agreement speaks for itself so that there is no need for me to go into its details. In my judgment, an agreement such as this cannot be a suitable basis for the valuation of another piece of land in the neighbourhood."

With respect I do not agree. Mr. Williams had cited the sale of Lot 2285 for what it was worth. The land was intended for a 16-storey block of good class flats. When the price paid came under consideration, it seems to me that the object of the purchase could not be wholly ignored. A tower block is a prestige building, not simple two-storeyed shops or dwelling-houses for which $6.38 per square foot might possibly have been thought somewhat expensive. The only ground, however, which carried weight with the learned judge was that it was a sale by a director to his company, not even that for such reason it was over-priced. It was left to innuendo that the price was too high. But was there an iota of fact or evidence to show that the transaction was in any way dishonest, or that the co-directors were parties to a shady transaction which should reflect on the price? In my judgment, there were no grounds whatsoever for impugning the price paid and if the respondent had any grounds to attack the *bona fides* of the parties concerned therein, the onus was never discharged. It is not that this transaction was being considered in isolation, since, in the immediate vicinity, the price agreed upon for the sale of Lot 1 in April 1964 was $7.90 per sq. ft., showing a rise of no less than $1.50 in 13 months. If $7.90 was a genuine reflection of market value in April 1964, could $6.38 have been rejected out of hand as false in March 1963?

Next it was said, in respect of Lot 1, that an agreement to sell was "not a sale at all". The genuineness of that transaction could not have been impugned at all and it was not. But was a binding agreement of sale any less a criterion of market value than the sale itself which was to follow at the agreed price? There was not even any evidence incidentally showing that the sale had been called off, but merely that, for the time being, building operations had not been proceeded with, for reasons which satisfied the parties concerned. The truth is that, as between the owner and the purchasers, the price of the land was by common consent fixed at $7.90 and if that was to be disregarded as a fair indication of market value I fail to understand what better evidence thereof could have been adduced. Considered each by itself, perhaps it may be argued that one swallow does not make a summer, but, taken together, it seems to me that they afforded each other mutual support to the extent that they became unshakable evidence of current market prices of land in the vicinity. As even the government valuer admitted, "I find nothing wrong with the agreement (P.11). The price mentioned in this agreement is consistent with the price of Lot 2285." Accordingly, in my judgment, the values accepted in March 1963 and April 1964 ought to have been taken into consideration in any fair and proper assessment of the market value of the appellants' land. Both transactions were certainly more proximate in time than the sale of Lot 29 in September 1962.

Lest it be said that I have overlooked the transfer of State land for the Tuberculosis Hospital extension, at $3.50 per square foot in October 1964, it may be said briefly that other considerations apply, which do not to this compulsory acquisition. A sale of State land to the Ministry of Health can hardly be said to belong to the category of business transactions.

Proceeding farther afield, but for comparison and cross-checking purposes, Mr. Williams went on to consider values of land in Imbi Road, Ipoh Road and Pahang Road. Having carefully examined the other sales listed by Mr. Williams, I hold that they bear out the conclusions which he arrived at. In particular I find that those instances do not in any way detract from the weight of the evidence afforded by the sales of Lot 2285 and Lot 1 as to the proper market value which should be placed on the acquired land.

As regards the Imbi Road area, Mr. Williams in his evidence claimed that "Imbi Road land values are a suitable criterion for valuing this area". This was conceded by the government valuer. As he said, "Lands comprised in sales 14, 15 and 16 mentioned by Mr. Williams have the same potentialities as the land under acquisition, provided it is permitted by the authority." It is difficult to envisage any sort of planning permission being granted for the Imbi Road lands which would have been denied these appellants. The government valuer did not elaborate. Hence the Imbi Road lands could be regarded as comparable. These three sales were as follows:—

"14. Lot 418, Imbi Road, 2.569 acres, sold in August 1963 at $5 per sq. foot.

15. Lot 424, Imbi Road, 1.341 acres, sold in January 1964 at $11.12 per sq. ft.

16. Lots 273 & 428, Imbi Road, 2.775 acres, sold in July 1964 at $10.77 per sq. ft."

Before I conclude I think a few words may be said further about the development potentialities. Mr. Williams, for cross-checking purposes, had based his calculations on 54 units per acre to arrive at his assessment of $486,000 or approximately $11.15 per square foot (see Ex. P.8). Mr. Watkinson of the Federal Department of Town and Country Planning also gave evidence

on this point. I do not propose to discuss at length his expressions of opinion about what he would or would not have recommended, although he was prepared to approve 40 units per acre. Since, however, Government plans have gone very much higher — in fact to 135 flats per acre, which Mr. Watkinson still regarded as "open development," he conceded that "a private owner can have the same development if he provides amenities". It has been shown that for Imbi Road 60 units per acre was allowed. Hence it seems to me that there was nothing impracticable in Mr. Williams' thesis based on 54 units. If enlightened town planning sees no harm in permitting the density envisaged by the Government, I have no doubt that the appellants would have obtained approval for their plan, with such modifications as may be called for, to enable development of their land based on no higher than 54 units per acre.

In conclusion I would repeat what was said by Danckwerts L.J. in the *Duke of Buccleuch's* case, that the question which falls to be decided here is "a question of fact for the tribunal which can only be ascertained on expert evidence." For the various reasons above set out I hold that the assessment of market value made by Mr. Williams was based on sufficient reliable data in accordance with sound principles. As I have already explained, the contrary views of the government valuer cannot be sustained. Superior evidence must tell and be accepted. I should add that the inferences which I myself have drawn from the facts and figures adduced in evidence lead me to the same conclusion as the appellants' expert witness I accordingly accept the evidence of Mr. Williams, generally, and the sales of Lot 2285 and Lot 1, in particular, as true reflections of market value at the relevant time. Allowing, in the respondent's favour, the possibility that prices were about to become static at the crest of the boom, the market value per square foot of the acquired land, in my judgment, ought to be fixed at $8. In so finding, I have not overlooked the opinions of the assessors. I have given careful thought to their respective views, but, in the light of the evidence, I think that, despite the three different conclusions reached in the court below, those views out of deference for the judge, could not fail to have been coloured to an appreciable extent by the strong views and, possibly directions in law, of the judge himself.

I have, at any rate, given the most anxious consideration to every possible factor which ought to be taken into account in the respondent's favour towards reducing the price that will have to be paid. Two such factors are (a) the presence of squatters, who would have to be cleared, and (b) the question of land wastage on provision for roads. As regards the former, Mr. Williams' information — derived from the appellants and based, I should think, on rent collection — was that there were 47 squatter houses on the land. He made an allowance of $4,000 per building for their clearance, making an estimate total of $188,000. I have again not overlooked the evidence of Mr. Koh Eng Lim, the administrative officer (Housing) attached to the office of the Commissioner of the Federal Capital, who testified that a census of this area taken from July 19 to 28, 1965, showed 181 squatter houses on the land. In cross-examination, however, he was unable to say how many buildings there were, although he disputed "the figure of 47 houses given by the collector" as correct. This evidence, generally, seems to me rather unsatisfactory as he could not say, again, since when the squatters he referred to had been living on the land. Remembering that the notice of intended acquisition was *gazetted* on June 4, 1964, it would be natural for the appellants to realise immediately that their future concern in the land had evaporated. It was and is a notorious fact — of which the Commissioner of the Federal Capital is more keenly aware than anybody else — that the pressure of a rising population has made squatters move illegally into vacant lands in Kuala Lumpur the way that nature abhors a vacuum. Hence there was every likelihood that an increase in illegal occupation by squatters took place after the appellants had lost interest in the land themselves. Taking all circumstances into consideration, therefore, I would go along with Mr. Williams and allow, in round figures, $200,000 for squatter clearance.

Next, there is the question of land wastage in provision for roads. I should point out that I have not accepted Mr. Williams' assessment of $11.15 per square foot to which reference was made a little earlier in this judgment. I have accepted, instead, the agreed prices on the sale of Lot 2285 and Lot 1. It is self-evident enough to go without saying that buildings were not planned to occupy these lots to the last square foot, but that roadways are a *sine qua non*. As the price paid by the purchasers necessarily took that fact into consideration, the same must be said of this acquired land when priced at the same level. On the other basis of $11.25 per square foot, of course, special deduction for roads would have been inevitable. Therefore, the wastage of 4 acres, or approximately 18 per cent of the total area acquired, which the government valuer allowed for, would not apply. At any rate the agreed adjustment of boundaries, which for practical purposes was a *fait accompli* must, as conceded, reduce such wastage by an appreciable extent; there is no evidence what this area would be, if any.

There still remains the bare possibility that I may have overlooked some other factor in the respondent's favour, although I do not think so. Consequently and purely as a precaution any measure, I think it is in the best interests of all

parties that no inadvertence on my part should provide grounds for litigation to be needlessly prolonged. For this reason, then, I would reduce my award by 10 per cent again.

This appeal being thus allowed, the cost of 991,730 square feet at $8 would amount to $7,933,840. Deducting $200,000 for squatter clearance leaves a balance of $7,733,840. Deducting again 10 per cent of this figure leaves my net award at the sum of $6,960,456, which works out at $7.09 per square foot. I direct that this sum be paid to the appellants in the proportion of their respective shares, less the amount awarded by the collector in case the same had already been paid.

In accordance with the provisions of section 48 of the Land Acquisition Act, 1960, I further order that interest be paid on the excess figure of $3,985,266 at the rate of 6 per cent per annum from June 26, 1965, the date on which the collector took possession, till date of payment.

As to costs, the order of the learned judge is set aside. By virtue of the provisions of para (c) of section 51(1) of the Act, I would make no order as to costs both here and in the court below.

Raja Azlan Shah and **Pawan Ahmad JJ.** concurred.

Appeal allowed.

Solicitors: *Skrine & Co.; Braddell & Ramani.*

QUEK AH CHIAN v. NG GUAN CHNG

[A.C.J. (Wee Chong Jin C.J.) February 22, 1968]
[Singapore — District Court Appeal No. 19 of 1967]

Family Law — Maintenance — Charge of "cruelty" — Omission to maintain — Women's Charter, 1961, s. 62(1)(c) & (d).

A charge of cruelty under section 62(1)(d) of the Women's Charter raises a serious issue and magistrates must constantly bear in mind that an applicant to succeed under that section must establish acts or conduct on the part of the husband which cause danger to life, limb or health, bodily or mental, or give rise to a reasonable apprehension of such danger. "Cruelty" has the same meaning in law in maintenance proceedings as well as in divorce proceedings under the Women's Charter.

It is necessary that an applicant under section 62 (1)(c) of the Women's Charter must prove not only an omission to maintain her but also that it was a culpable omission. Where the wife refuses to continue to reside in the matrimonial home, there must be acceptable evidence that the acts or conduct of the husband had been of such a character or degree that she was reasonably justified in continuing to live apart from her husband.

Case referred to:—

(1) *Russell* v. *Russell* [1895] P. 315.

DISTRICT COURT APPEAL.

Kumar Lal for the appellant.

S. S. Lee for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This case demonstrates the sad and unhappy consequences that often flow when parents and relatives of two young people, about to be married or just newly married, seek to interfere with their married life and especially when both of them permit themselves to be influenced by such interference, however well-intentioned it may be.

The facts are these. The appellant a school teacher, earning a salary of $1,019.25 a month, after courting the respondent, then employed as a clerk in the same school, for more than four years, married the respondent on the 11th December 1965. Just four months later, on 23rd April 1966 the respondent left the matrimonial home and went back to live with her own parents.

According to the wife the circumstances which led to her leaving the matrimonial home were these. During the wedding celebrations a misunderstanding arose between her parents and her husband. Her husband refused to offer tea to her parents on the wedding day and instead demanded two bowls of rice. Her mother not knowing of this particular custom, put two bowls of rice in two cellophane bags with a "red packet" on top of each bowl. On seeing this, her husband was angry, why we are not told, and scolded her younger sister. Thereupon her mother told her younger sister not to attend the wedding dinner.

After the wedding, the matrimonial home was set up in the home of her husband's parents. During the four months they were living together the wife in her own words was "rather happy" in spite of the fact that her husband refused to allow her to pay visits to her own family and to pay her last respects to her grandmother when the latter died.

On the evening before she left the matrimonial home, her father, younger brother and a woman neighbour of her parents came to visit them. Her father invited the married couple to visit their home as the school holidays were on and also asked her husband to allow her to visit and stay with her parents for a few days. Her husband refused the invitation to visit her parents and also refused to allow her to stay with her parents for a few days although she said she wanted to do so. After the visitors had left, he punched her several time on the lips and face and refused to allow her to sleep on the matrimonial bed and made her sleep on a canvas bed. In the middle of the night he again punched her and told her to leave the house immediately. Again, the next morning he told her to leave the house and never to return. As she kept quiet he slapped her and tried to make her write a statement that she was leaving the house of her own accord. This she refused to write. After her husband had gone out of the house, she also left